

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<hr/>	)	<b>Chapter 11</b>
	)	
<b>Kiebler Recreation, LLC</b>	)	<b>Case No. 10-15099</b>
<b>dba Peek’N Peak Resort &amp; Spa</b>	)	
	)	<b>Judge Baxter</b>
<b>Debtor.</b>	)	
<hr/>	)	

**JOINT *EX PARTE* EMERGENCY MOTION OF DEBTOR AND OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS FOR ORDER  
SCHEDULING EXPEDITED HEARING ON:**

**(I) FIRST AMENDED DISCLOSURE STATEMENT AND  
(II) DISCLOSURE STATEMENT MOTION**

Now come Kiebler Recreation, LLC (the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee” and with the Debtor, the “Parties”), pursuant to section 105 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to hereby respectfully request (the “Emergency Motion”), that the Court schedule an expedited hearing on a date and time that is at the Court's earliest convenience on or shortly after March 28, 2011 to consider the Debtor's First Amended Disclosure Statement [docket # 538] and the Debtor's Motion for Order Approving Disclosure Statement, Approving Solicitation Procedures and Establishing Deadlines in Connection Therewith, and Scheduling Confirmation Hearing and Shortening Notice Period with Respect Thereto [docket #s 438 and 533], as thereafter supplemented (the "Disclosure Statement Motion"), shorten the response period with respect to these matters, and approve the form and manner of notice of the hearing on the First Amended Disclosure Statement and Disclosure Statement Motion. In support of this Emergency Motion, the Parties respectfully state the following.

## **JURISDICTION**

1. The Court has jurisdiction to consider this Emergency Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2).

## **BACKGROUND**

2. On May 26, 2010 (the "Petition Date"), the Debtor commenced the above-captioned case under the Bankruptcy Code. The Debtor operates Peek’N Peak Resort and Spa, a popular recreational and tourist complex in Chautauqua County, New York (the "Resort"). The Debtor is authorized to continue to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Office of the United States Trustee appointed a committee of unsecured creditors (the "Committee") on June 9, 2010. No trustee or examiner has been appointed.

3. On November 24, 2010, the Debtor filed its Plan of Reorganization [docket # 378] (the "Plan"). That same day, it filed its Disclosure Statement with respect to the Plan [docket # 379] (the "Disclosure Statement").

4. On March 14, 2011, the Debtor filed its First Amended Plan [docket # 537] (the "First Amended Plan") and the First Amended Disclosure Statement. The First Amended Plan and First Amended Disclosure Statement are the embodiment of an agreement reached on plan terms among the Debtor's major creditor constituencies.

5. At hearing on March 15, 2011, the Court ruled that the original Disclosure Statement did not contain adequate information within the meaning of Bankruptcy Code section 1125. The Court did not rule on the adequacy of the First Amended Disclosure Statement.

6. The Parties respectfully request that the Court schedule an emergency hearing on the First Amended Disclosure Statement.

**RELIEF REQUESTED**

7. The Parties request the entry of an Order: (i) scheduling an expedited hearing at the Court's earliest convenience on or shortly after March 28, 2011 to consider the First Amended Disclosure Statement and Disclosure Statement Motion; (ii) shortening the response period; and (iii) approving the form and manner of the proposed notice of the expedited hearing.

8. Under Rule 9013-1(b) of the Local Rules of the United States Bankruptcy Court for the Northern District of Ohio, any interested party has fourteen days from the date of a notice to respond to a motion, unless otherwise ordered by the court.

9. Section 105(a) of the Bankruptcy Code gives the Court the power to enter “any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy Rule 9006 permits the Court to reduce the time period prescribed for notice of certain actions “for cause shown.” Fed. R. Bankr. P. 9006(c)(1).

10. The Parties believe the imminent expiration of both the Debtor's exclusivity period and the ability to use of cash collateral (both of which expire as of April 13, 2011) provide good and sufficient cause to justify shortening the notice period for hearing the First Amended Disclosure Statement on an expedited basis. In addition, the original Disclosure Statement has been on file since November 2010, and the changes made since that time have been made at the insistence of the relevant parties.

11. The Parties respectfully suggest that an expedited hearing at its earliest available date on or shortly after March 28, 2011 would be appropriate for all interested parties, each of

whom has had an adequate opportunity to review the First Amended Disclosure Statement and most—if not all—of whom have agreed to its terms.

12. The Parties request that the Court enter an order shortening the notice and time period for filing an objection to or otherwise responding to the First Amended Disclosure Statement and requiring any objection to the First Amended Disclosure Statement to be submitted prior to or at the expedited hearing thereon. The Parties submit that the shortened notice period will give all interested parties a reasonable opportunity to respond to the First Amended Disclosure Statement.

13. The Parties also request that the Court approve the proposed Notice of Expedited Hearing on the Motion (the “Notice”) in substantially the form as that attached hereto as Exhibit A. Upon entry of an Order approving this Emergency Motion, the Parties propose to serve the Notice as soon as practicable by e-mail to the following parties or their counsel: (a) the United States Trustee, (b) the Debtor’s secured lenders, The Huntington National Bank, PNC Bank, and Vincent Cross, Executor of the Estate of Norbert Cross and Raquel Cross, Executrix of the Estate of Eugene Cross; (c) the Committee; (d) the New York State Department of Environmental Conservation.; (e) C.A. Curtze Company, Inc., dba Specialty Steak Service; (f) Guy and Heidi Fustine; and (g) all parties that have requested notice in this case. The Parties request that service of the Notice in the form and manner proposed in this Emergency Motion be deemed sufficient and appropriate under the circumstances.

#### **WAIVER OF MEMORANDUM OF LAW**

14. The Parties submit that this Emergency Motion does not present any novel issues of law requiring further briefing; moreover, appropriate authorities have already been cited herein. Therefore, the Parties respectfully request that the Court waive the requirement pursuant

to Rule 9013-1(a) of the Local Rules for the United States Bankruptcy Court for the Northern District of Ohio that a separate memorandum be filed in support of the motion.

### **CONCLUSION**

**WHEREFORE**, the Parties respectfully request that the Court (i) enter an Order, substantially in the form of the proposed order attached hereto as Exhibit B, scheduling an expedited hearing on the First Amended Disclosure Statement and Disclosure Statement Motion, as thereafter supplemented, on a date and time that is at the Court's earliest convenience on or shortly after March 28, 2011; (ii) shortening the response period and approving the form and manner of the Notice; and (iii) granting such other and further relief to the Parties that the Court deems just and proper.

Dated: March 15, 2011

Jointly submitted,

/s/ Robert C. Folland

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***EXHIBIT A – PROPOSED NOTICE***

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>In re</b>	)	<b>Chapter 11</b>
	)	
<b>Kiebler Recreation, LLC</b>	)	<b>Case No. 10-15099</b>
<b>dba Peek’N Peak Resort &amp; Spa</b>	)	
	)	<b>Judge Baxter</b>
<b>Debtor.</b>	)	
	)	

**NOTICE OF EXPEDITED HEARING ON (I) FIRST  
AMENDED DISCLOSURE STATEMENT AND  
(II) DISCLOSURE STATEMENT MOTION**

PLEASE TAKE NOTICE THAT on March 15, 2011, Kiebler Recreation, LLC (the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee” and with the Debtor, the “Parties”) filed their motion (the “Emergency Motion”), pursuant to section 105 of title 11 of the United States Code and Rule 9006(c) of the Federal Rules of Bankruptcy Procedure, requesting that the Court schedule an expedited hearing on or shortly after March 28, 2011 on the Debtor's First Amended Disclosure Statement and motion for order approving same, shorten the response period with respect to the First Amended Disclosure Statement, and approve the form and manner of notice of the emergency hearing on the First Amended Disclosure Statement.

PLEASE TAKE FURTHER NOTICE THAT on **March \_\_, 2011 at \_\_\_\_\_.m., Eastern Time**, the Honorable Randolph Baxter, United States Bankruptcy Judge, will conduct an emergency hearing (the “Hearing”) on the First Amended Disclosure Statement and motion for order approving same at the United States Bankruptcy Court, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Ave., Cleveland, Ohio 44114-1235.

PLEASE TAKE FURTHER NOTICE THAT, if you oppose the First Amended Disclosure Statement, or if you would like the Court to consider your views with respect to the First Amended Disclosure Statement, then you or your attorney must attend the Hearing.

Dated: March \_\_, 2011  
Cleveland, OH

**EXHIBIT B – PROPOSED ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<hr/>	)	<b>Chapter 11</b>
<b>In re</b>	)	
	)	
<b>Kiebler Recreation, LLC</b>	)	<b>Case No. 10-15099</b>
<b>dba Peek’N Peak Resort &amp; Spa</b>	)	
	)	
<b>Debtor.</b>	)	<b>Judge Baxter</b>
<hr/>	)	

**ORDER SCHEDULING EXPEDITED HEARING ON (I) FIRST  
AMENDED DISCLOSURE STATEMENT AND  
(II) DISCLOSURE STATEMENT MOTION**

This matter is before the Court upon the motion (the "Emergency Motion") of Kiebler Recreation, LLC (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee" and with the Debtor, the "Parties"), seeking an Order scheduling an expedited hearing on or shortly after March 28, 2011 on the Debtor's First Amended Disclosure Statement and motion for order approving same (the "Emergency Motion"), shortening the response period with respect to the First Amended Disclosure Statement, and approving the form and manner of notice of the expedited hearing on the First Amended Disclosure Statement; whereupon the Court finds that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the Parties have set forth good and sufficient cause for the relief requested in the Emergency Motion; and (iv) notice of the hearing on the First Amended Disclosure Statement in accordance with this Order shall constitute good and sufficient notice under the circumstances.

**IT IS THEREFORE ORDERED** that a hearing before the Honorable Randolph Baxter shall be held upon the First Amended Disclosure Statement and motion for order approving same on March \_\_, 2011 at \_\_: \_\_ .m. in the United States Bankruptcy Court for the Northern District



of Ohio, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio 44114-1235 (the “Hearing”); and

**IT IS FURTHER ORDERED** that the form and manner of the proposed notice attached to the Emergency Motion as Exhibit A to be utilized to provide notice to interested parties of the hearing on the First Amended Disclosure Statement (the “Notice”) is approved in all respects; and

**IT IS FURTHER ORDERED** that the Parties be, and hereby are, directed to send a copy of the Notice and this Order by e-mail to the following parties or their counsel: (a) the United States Trustee, (b) the Debtor’s secured lenders, The Huntington National Bank, PNC Bank, and Vincent Cross, Executor of the Estate of Norbert Cross and Raquel Cross, Executrix of the Estate of Eugene Cross; (c) the Committee; (d) the New York State Department of Environmental Conservation.; (e) C.A. Curtze Company, Inc., dba Specialty Steak Service; (f) Guy and Heidi Fustine; and (g) all parties that have requested notice in this case, and service of the Notice in the form and manner described shall be sufficient and appropriate under the circumstances.

**IT IS SO ORDERED.**

# # #

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing emergency motion was served electronically through the Court's ECF System upon the parties listed below on March 15, 2011.

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/s/ Andrew Turscak  
Andrew L. Turscak, Jr.